

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 04-67

July 1, 2004

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Revisions to Unfair Labor Practice And Representation
Casehandling Manuals

Attached are four documents for inclusion in the Unfair Labor Practice (ULP) and Representation Casehandling Manuals as set forth below.

- (1) The revisions to a portion of Section 10236 of the ULP Manual, which reflect the modifications to the rules concerning filing of appeals as set forth in Memorandum OM 03-101, should be substituted for the corresponding pages currently in the ULP Manual.
- (2) The revised Section 10164.8, which reflects that the correct number of copies of a formal settlement agreement, the documents constituting the record in the case, and transmittal memorandum that should be submitted to the Office of the Executive Secretary is an original and four.
- (3) The revised Unfair Labor Practice Proceedings Index should replace the current index in the ULP Manual.
- (4) A Separate Common to All Cases Index, which covers Sections 11700-11886 (Common to All Cases) should replace the current Common to All Cases Index in the Representation Manual only.

These revisions will also be made to the ULP and Representation Manual available on the Agency's website (www.nlr.gov) as well as on the Agency's intranet.

If you have any questions regarding this memorandum, please contact your AGC or Deputy or the undersigned.

/s/
R.A.S.

cc: NLRBU

Attachments

Release to the Public

Sec. 101.9(d)(2), Statements of Procedure and Sec. 102.26, Rules and Regulations.

10164.8 Transmittal Memorandum

The Region should prepare a transmittal memorandum to assist in the review of the formal settlement agreement. The transmittal memorandum should explain the details of the agreement, emphasizing any unusual facts or deviations from standard provisions. In particular, the memorandum should specify the alleged violations the proposed order intends to remedy.

The transmittal memorandum should address the following issues:

- The extent of the remedy regarding backpay, reinstatement/instatement, and notice posting. If the settlement agreement does not provide for a complete remedy, the memorandum should explain the circumstances. For example, the memorandum should note if discriminatees have waived reinstatement and have agreed to a reduction in backpay.
- If backpay is paid through installments based upon a respondent's financial condition, the circumstances of such condition should be explained. In addition, the memorandum should reference any provisions and security arrangements regarding future payments.
- Any unusual remedies.
- Any deviation from normal time limits for compliance.
- Any notice provisions which do not mirror the proposed order or do not conform to provisions normally ordered by the Board.
- If applicable, explain the lack of a provision for entry of a court judgment.
- If applicable, explain the necessity for a broad cease-and-desist order.
- If applicable, set forth the provisions of the settlement agreement that respondent has already complied with.
- In a unilateral settlement, discuss any objections that have been raised.

In a bilateral formal settlement, the original and four copies of the transmittal memorandum, the executed stipulation and the documents constituting the record in the case should be submitted to the Office of the Executive Secretary. In a unilateral formal settlement, the same number of copies should be submitted to the Division of Advice.

The correct address for each party, as well as the facsimile number and E-mail address, should be included in the submission. The document(s) comprising the formal settlement must contain at least one original signature for each necessary party. In addition, the formal settlement should be transmitted electronically to the Executive Secretary or Advice, as appropriate.

The Region has carefully investigated and considered your charge against [Charged Party name] alleging a violation of Section 8(b)(7)(C) of the National Labor Relations Act. The investigation disclosed that a timely valid representation petition has been filed in Case ___-R___-_____ within a reasonable time from the commencement of the picketing involved in the charge.

Decision to Dismiss and Conduct Election: Section 8(b)(7)(C) of the Act permits a union to picket to obtain recognition if a representation petition is filed either before, or within a reasonable period of time of, such picketing. Therefore, I am dismissing your charge. Pursuant to the expedited election procedures of 8(b)(7)(C) and Section 102.77 of the Board's Rules and Regulations, I have separately directed an expedited election in Case ___-R___-_____.

Your Right To Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. However, filing an appeal will not stay the holding of the election. If you wish to file an appeal, please note the following:

Appeal Due Date: The appeal must be received by the General Counsel in Washington, DC by the close of business at 5:00 p.m. [EST or EDT, as appropriate] on [7 days from issuance]. However, if you mail the appeal it will be considered timely if it is postmarked no later than one day before the due date. The appeal may not be filed by facsimile transmission or through the Internet.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for extension of time may be made by mail, facsimile transmission or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. Any

request for an extension of time must be received no later than the appeal due date indicated above. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

Appeal Contents: You are encouraged to submit a complete statement setting forth the facts and the reasons why you believe the decision to dismiss your charge was incorrect. However, the enclosed Appeal Form (NLRB-4767) by itself will be treated as an appeal if timely filed upon the General Counsel and me.

Address for Appeal: The appeal should be sent to the General Counsel of the National Labor Relations Board, Office of Appeals, 1099 14th Street, NW, Washington, DC 20570. You should send a copy of the appeal to me.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

Regional Director

cc: Charged Party

Other Parties

Attorney(s) or Representative(s) of record

General Counsel, Office of Appeals

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